

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Bradley S. Junker,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

Dan Birkholz, County of
Cottonwood, Doug Bristol,
and John Scholl,

Defendants.

Civ. No. 08-5159 (JRT/RLE)

* * * * *

This matter came before the undersigned United States Magistrate Judge upon routine supervision of cases filed in this Division, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

The action was commenced on September 9, 2008, by the filing of a Complaint, and an Application to proceed in forma pauperis, with the Clerk of Court. See, Docket Nos. 1, 2. By Order dated September 15, 2008, see, Docket No. 3, we advised the Plaintiff that, pursuant to the Prison Litigation Reform Act of 1995, Title 28 U.S.C. §1915(b)(1), he would be required to pay an initial partial filing fee of no less than \$53.70, and that he would be further required, pursuant to Title 28 U.S.C.

§1915(b)(2), to pay the remaining balance of the \$350.00 filing fee in installments, through regular deductions from his trust account. Accordingly, we directed the Plaintiff to submit his initial partial filing fee, together with one (1) completed United States Marshal Service form for each Defendant, by no later than October 6, 2008, and we forewarned the Plaintiff that, if he failed to comply with our directives, we would recommend that this action be summarily dismissed, without prejudice, for failure to prosecute. See, Docket No. 3.

The Plaintiff has failed to abide by the terms of our Order of September 15, 2008. Since we have previously warned the Plaintiff of the potential consequences for his failure to timely pay the initial partial filing fee, and to abide by the Orders of this Court, we recommend that this action be dismissed without prejudice, for failure to comply with this Court's Order of September 15, 2008, for failure to pay the initial partial filing fee, and for lack of prosecution.

NOW THEREFORE, It is --

RECOMMENDED:

That this action be dismissed, but without prejudice, for failure to comply with this Court's Order of September 15, 2008, for failure to pay the initial partial filing fee, and for lack of prosecution.

BY THE COURT:

Dated: October 14, 2008

s/Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than October 31, 2008**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than October 31, 2008**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.